

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

FEB 26 1996

NO PROTEST RECEIVED
Release Copies to District

Date: 3/28/96
Signature: [REDACTED]

EIN: [REDACTED]
Key District: Ohio (Cincinnati, OH)

Dear Sir/Madam:

We have considered your application for recognition of exemption from federal income tax under section 501(a) as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were formed on [REDACTED], [REDACTED]. Your "Articles of Incorporation" have not been accepted by the State, nor do they limit your activities to those within the meaning of section 501(c)(3) of the Code.

You were formed to operate a school from K - 12th grade. Classes will be taught by [REDACTED], your founder. Classes will be conducted in your founder's home. [REDACTED] is your only officer. [REDACTED], [REDACTED], is the only member of your Board of Directors. There are [REDACTED] students enrolled in the school. All students are related to your founder. While you have a nondiscriminatory policy, it has not published or made known to the general public.

Section 501(c)(3) of the Code provides for the exemption of organizations organized and operated exclusively for "educational" purposes. Section 501(c)(3) states that no part of the net earnings may inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(a) of the Income Tax Regulations define education, in part, as the instruction or training of the individual for the purpose of improving or developing his capabilities.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized, or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 170(b)(1)(A)(ii) of the Code define a school as an organization that presents formal instruction, maintains a regular faculty, maintains a curriculum, and normally has a regularly enrolled body of pupils in attendance at the place where the organization regularly carries on its educational activities.

Rev. Proc. 75-50 sets forth guidelines and record keeping requirements for determining whether private schools that are applying for recognition of exemption from federal income tax under section 501(c)(3) or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students. Section 2.02 provides that a school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy it has operated in a bona fide manner in accordance therewith. Section 4.032(c) provides, in part, that whether a particular school follows a racially nondiscriminatory policy will be determined on the basis of the facts and circumstances of each case. Both that section and other provisions of the Rev. Proc. enumerate some of the relevant facts and information to be considered in making the determination.

While you have a formal course program, maintain a regular faculty, a regular enrolled body of students, and a regular facility where the educational activities are carried on, you have not made your nondiscriminatory policy known to the general public as required in Rev. Proc. 75-50. Mere adoption of a nondiscriminatory policy will not meet the requirements of Rev. Proc. 75-50. Furthermore, you have no active recruitment program to recruit black students and/or teachers.

It appears that you are operating for the private benefit of your founder and the founder's family, as the founder has a personal and private interest in your school.

The control over you by your founder and her family further substantiates the appearance of the promotion of personal and private interest. The following represents this control, (1) you have no members except the spouse of your founder, (2) the two directors are related to your founder and your students, (3) directors do not have a term of office, (4) your facility belongs to the founder and her husband, and (5) your students are related to your founder.

Your "Articles of Incorporation" do not limit your activities to those permitted under section 501(c)(3) of the Code.

Therefore, based on the information provided, you have not demonstrated that you are organized or operated exclusively for purposes described in section 501(c)(3) of the Code. You are therefore not entitled to exemption under section 501(c)(3).

You are required to file federal income tax returns on Form 1120. Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements. -

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

[REDACTED]

You will expedite our receipt of your protest by using the following address on the envelope:

Internal Revenue Service
CP:E:EO:T:2, Room 6138
Attn: [REDACTED]
1111 Constitution Ave., N.W.
Washington, D.C. 20224

FAX (202) [REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

Signed [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 2

bcc: *Northeast (Brooklyn)*
DD, ~~Ohio (Cincinnati) OH~~
Attn: EP/EO Division

bcc: State Officials

bcc: [REDACTED] w/ administrative file

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
Code	CP:E:EO:T:2	CP:E:EO:T:2			
Surname	[REDACTED]	[REDACTED]			
Date	2-22-96	2-23-96			